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DISSTON'S CELEBRATED SAWS AND FILES, ALL SIZES: The same a section of stands of the Boston for Carpenters, Machinets, Blackenithe & Borreshides, Mar St. Sain, Carr Natis, Cut Spiker, Horse & Mair She

Latest Improvements in Shelf Hardware the way of the board very Law Markey Markey and I had Londs. Zine, Small Paints in Oil, and Various Punits, Western Paints in Contribution

STAPLE DRY GOODS Pendan, Vand Sur. Ticking, A.C.A. B and D.Konclief and University Cottons, Russia Darjer and Reading Drills, Live Starting, Monayle, Laws See, Blee and Scarlet Flagger.

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For Kerosene Oil We Offer THE PALACE, and Guarante it cannot be beat for quality or price; also, THE

VULCAN, a good oil and above test: WOODWARD & BROWN'S CELEBRATED PIANOS

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BROWN # CO.,

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Superior Ginger Beer, : 10c. per bottle Dannotiy's Root Beer. : 10c. per bottle Donnelly's Spruce Beer. : 10c. per bottle

Candies! Candies

Smoke! Smoke! Smoke!

Robert Donnolly.

Hawaiian Gazette.

This is a bill to declare fraudulent and void a sale made by defendant to plaintiff of sixty shares of the capital stock of the Honolulu Ice Oc.,—a corporation under Hawaiian law—at \$70 per share, and also for an injunction to restrain defendant from taking out an execution upon a judgment for \$4,200 obtained by the defendant against the plaintiff at the last July term of this Court, for the purchase money of this stock. of this stock.

The bill charges that the fraud was accoun

knew that the new ice company was about to be formed. This is clear from the evidence of

April 10, immediately and the stock.

Was fillis under any legal obligation to disclose this information to Wilcox?

By the authorities he was not, Chancellor Kent's statement of the law in this regard is sar favorable to the plaintiff as any. He says:

"When, however, the means of information of particulars in regard to the estate, which the lower has not equal means of knowing and When, however, the means of information clative to facts and circumstances affecting the buyer has not equal means of knowing and where he is induced to forbear inquiries that where he is induced to forbear the value of the commodity, be equally accessible to both parties and neither of them does or says anything tending to impose upon the other, the disclosure of any superior knowledge which one party may have over the other, as to those facts and circumstances, is not necessary to the validity of the contract. There is induced to torbear inquiries that he observed in the light of assertions gratis filed," and are actionable."

In Cooper vs. Levering the Court say to support an action of deceit, the misrepresentation must be of a material fact, not within the observed of the other party. The latest researy to the validity of the contract. There no breach of any implied confidence that party will profit by his superior knowle, us to facts and circumstances open to observation of both parties, or equally ithin the reach of their ordinary diligence. within the reach of their ordinary diligence; because neither party reposes in any such confidence, unless it be specially tendered or required. Each one, in ordinary cases, judges for himself, and relies confidently, and perhaps, presumptionary upon the sufficiency of him own knowledge, skill and diligence. The common law affords to every one reasonable protection against fraud in dealing; but it does

not go to the romantic length of giving indem-ntly against the correspondence of indolence and felly, or a careless indifference to the ordinary and accessible means of information." 2 Kent om. 484.

sass had caused to be published in the Daily

ry machinery.

Fomeroy says, (Sec. 904 2 Pomeroy Eq. 917) that a broader duty to disclose material acts rest upon the vandor than on the vendee.

essio ceri, "It is not every concealment on of facts material to the interests of a rty which will entitle him to the interposion of a Court of Equity. The case must arty, under the circumstances, is bound in mecience and duty to disclose to the other arty, and in respect to which he cannot inno-ently be silent." And in Section 205, "The nestion is not whether an advantage has been ken, which in point of morals is wrong, or hich a man of delicacy would not have taken. But it is essentially necessary, in order to set aside the transaction, not only that a great advantage should be taken, but, also, that there should be some obligation on the party to make the discovery." Section 207. "The true definition, then, of undue concealment, which amounts to fraud in the sense of a Court Equity, and for which it will grant relief, the non disclosure of those facts and cir-umstances which one party is under some guil or equitable obligation to communicate the other; and which the latter has a right

And I gather from all the authorities that a sale of goods is not rendered invalid if the render has actual knowledge from private roos of facts or events-which are called trinsic circumstances—not known to the her party, which materially affect the price he goods. Story says where the intelligence s not equally accessible to both parties, equity will not relieve, if it is not a case of mutual outidence. Id. Sec. 149. See Laidige es. nu, 2 Wheaton 178, and Mathews rs, Bliss,

The rule as I have expressed it is subject to qualification; for if there be any fraudulent uggestion or representation, then the transacbecomes tainted with fraud. On the ground of undue concealment, there-ore, I think the bill fails.

In regard to the statements by Ellis, that it was good, marketable stock, etc., I should say was good, marketable stock, etc., I should say that this was a mere matter of opinion and as such is not relievable in equity, where as in this case, the parties were dealing with each other upon equal terms.

I pass now to the principal allegation upon which relief is asked for.

Wilcox testified that Ellis after expatiating on the value of the stock said that Wilder conered it a first rate investment and would not sell at less than par. He spoke of him as being President (of the Co.) and holding most of the stock. He said also that he would not have risked the offer he made of \$70 per ghare if he had known that Wilder's reason for re-

Mr. Wilder says further that he never offered o sell any of hie shares in this Co. "Don't emember if Ellis offered to sell any for me. remember if Ellis offered to sell any for me. He may have asked me if I had any for sale. I have never sold any or offered any for sale. I have never sold any or offered any for sale. It seems to me that the inference from Mr. Wilder's testimony is not that he would not sell for less than par because the stock was than worth at least par. He was unwilling to sell at all while the enterprise was in a condition of uncertainty. And I think Mr. Ellis mad the language attributed to him by Wilcez and that he intended to convey the idea to Wilcex that Wilder considered it of that value and thus to induce Wilcex to purchase. Mr.

Wilder says that if the opposition started, the stock in less dampany, noting to the limited demand for ice in this community, would be of no value as an anyestment but without the opposition if would pay any fe per cent, that he lead doubts as to the storting of the new company, until Mr. Sass returned from Cali-form with his forms with his machinery for he thought no man would be foolish enough to start a new

ice machine here.

Pennersy says (Sec. 876) a misrepresentation in order to constitute fraudement contain the following escential clements: (1) Its form as a statement of fact—as distinguished from a mere opinion. (2) Its purpose of inducing the other surfy to act—the general presumption being that a misrepresentation has such a design. (3) Its untruth. (4) The knowledge or belief of the party making it. (5) The offset of the misrepresentation, i, e, the belief, trust and relizance of the one to whom it is made. (6) Its materiality. And under (5) The party must be justified in relying upon the representation. Here the party is not justified in relying upon the representation is not justified in relying upon the representation is not maintain.

as follows: "Mere statements of a vendor either of real or personal property, not bein

in the form of a warranty, as to its value, price which he has given, or been offered for it are held to be immaterial," citing: held to be immaterial," citing:
Medbury vs. Walson, 6 Met. 230.
Hrown vs. Castles, 11 Cush. 350.
Vessey vs. Doton, 3 Allen 381.
Cooper vs. Hovering, 106 Mass. 79.
Money vs. Miller, 102 Mass. 217.
Williams vs. Randall, 63 Me. 81.

The bill charges that the fraud was accomplianced by misrepresentation and by the concealment of material facts. The misrepresentation is charged to be stamments made by defordant that the stock was good, marketable stock and a first rate investment at the prince officted, and that the President of the Loe Company, S. G. Wilder, who was the principal cowner of its stock, held it at par (\$100) and refused to sell for less.

The concealment is charged to be of the fact that the stock was unsaleable, and was by mason of an expected competition in the loc husiness, of greatly less value than par.

Taking up first the second point, I think it is proved by the evidence, that at the time of the sale of the stock, April 10, 1884, Ellis business, of greatly less value than par.

Taking up first the second point, I think it not against the vendor but against a third person by the evidence, that at the time of son who made the false representations and the sale of the stock, April 10, 1884, Ellis heave that the new ice commany was about to knew that the new its elect from the evidence of the formed. This is elect from the evidence of Mr. Sass, the projector of the company, who says he told Ellis all about it just previous to his going to San Francisco, about the last of March. Also that Wilcox did not know of it until be heard of it from Mr. W. O. Smith, on April 10, immediately after his purchase of the stock.

Little under any legal obligations will not excuse the neglect in not examining will not excuse the neglect in not examining

> servation of the other party. The latest Massachusetts case I have seen is Homer vs. Perkins 124 Mass. 431. The Court say if the representation was a mere affirmation or ex-pression of opinion in regard to the value of the property he is attempting to sell, these can never be safely relied upon by the other party. But if it was intended to be the statement of a fact, to be understood and relied upon as such, the action would lie. Citing Manning vs. Alose 11 Allen 520 where a false

Incharge of the control fills of the ventor. In now York State the law is similarly clary redation exists, and where necessificance, agreed that all necessary interments of the purchase in presume to implied, growing out on, or connected with a false procedent the ventor and the parties are dealing with each other at arm's length, and the purchaser is presumed to have as many reasonable opportunities for ascertaining all the lacts as any other, person in his place would have bad, then the general doctrine above stated applies; no, duty to disclose material data known to himself reast upon the ventor.

There was no following relation existing between that Wilder the President for the parties were a consultation. So far from this being the case, Wilcex says he was borded to like any so that the made the first of the relation of the value of the stock that it would be taken. The parties were at arm's length, while the presentation of the value of the stock that the mode the first of them, not expecting that two downs are the company—these and was, so to speak, surprised into the sale.

Mr. Justice Story (2 Story's Eq. Jur., Sec., 201) in speaking of undue concealment or appreciate or in present corn, "It is not every concealment or appreciate or in present the company—these and was, so to speak, surprised into the sale.

Mr. Justice Story (2 Story's Eq. Jur., Sec., 201) in speaking of undue concealment or appreciate corn, "It is not every concealment or appreciate corn, and the surpressor corn, "It is not every concealment or appreciate corn, and the company—these and was, so to speak, surprised into the sale.

Mr. Justice Story (2 Story's Eq. Jur., Sec., 201) in speaking of undue concealment or appreciate corn, "It is not every concealment or appreciate corn, and the induce him to give redit to the presentation of the value of the surpressor of such dispute existed."

Mr. Justice Story (2 Story's Eq. Jur., Sec., 201) in speaking of undue concealment or appreciate corn, "It is not every concealment or appreciate c

without payment. No exercise of diligence on the buyers part would be likely to reveal the fraud, for the conspirators would not disclose their fraud to the intending buyer Whether it was Wilcox's duty to make in quiries of Wilder to ascertain whether Ellis' statement was true or not is the remaining It will be noticed that in many of the above

noted cases the Court say that the facts mis-epresented must be one which the buyer has has not equal means of knowing," or a fact, "not within the observation of the other party" or a fact which could not be verified by the exercise of ordinary diligence etc."

The leading case on misrepresentation in England is Attrood vs. Small 6 Clark and Fin-nelly (Honec of Lords). Lord Lyndharst says "Where representations are made with respect to the nature and character of the property which is to become the subject of purchase affecting the value of that property, and those representations turn out to be incor-rect and false, to the knowledge of the party and those representations turn out to be incorrect and false, to the knowledge of the party forty six 12-100 bollars, being the balance making them—in a Court of Equity a foundation is laid for setting aside the contract which was founded on a fraudulent basis?" He quotes from Dobell vs. Stevens 3 B. & C. 623. Here the purchase was of a public house; a false representation was made by the vendor with respect to the extent of the custom, with respect to the quantity of the beer that was drawn during a certain period. The books tion &c. with respect to the extent of the custom, with respect to the quantity of the beer that was drawn during a certain period. The books were in the house; it was part of the case that

the purchaser night have had access to then that circumstance, it being proved the repre-sentation was false, the action was sustained. Lord Wynford says on p. 502, id. "I am aware that if a person chooses to trust to the representations and does not make any inquiry that reliance will be sufficient to make out a charge of false representations as to set aside the contract." If the party thinks proper to inquire etc. it will be otherwise.

other of facts and those facts turn out to be falsely asserted, he is damaged by the false-hood and the false assertion has all the effect of actual fraud." Some vs. Cored 29 Mich. 350

In Connectiont, Ires vs. Carter 24 Conn. 391 the Court held that "A representation of a vendor that N, had offered a certain sum for the property and stood ready to give it, if the other party purchased, was directly calculated to effect the value of the property and supported an action." Here there is no qualification numbe and yet the purchaser might have ascertained from N. if the representation was

Upon a careful review of such cases as I have been able to find I think the better dectrine is that where the false representation of a material fact, as distinguished from a more opinion, is made to a proposed purchaser by the seller, with the intention that he shall act upon it and he in fact dues act upon it to his injury, the contract of sale can be set aside in equity, even though the purchaser could by diligent inquiry have ascertained whether the representation was true or not.

tion of the partnership, accounting, settle-ment and general relief. The defense sets up that the plaintiff sustained the rela-tiouship of an employe only and denies most of the acts relied on by plaintiff. Upon the evidence of record, after hear-ing argument, we are of contract that

Upon the evidence of record, after hearing argument we are of opinion that the decree of the Chancellor sustaining the plaintiff's bill and ordering relief accordingly, should be sustained. Decree affirmed. Kinney & Peterson for plaintiff; S. B. Dole & Holekahiki for defendant.

Honolulu, March 13, 1885.

R. A. MACPIE VS. H. HACKPELD & Co. Beard by consent, March 3, 1865, the jury be

The plaintiff who is a resident of Dreghorn, Scotland, claims of H. Hackfeld, P. Isenberg, H. W. Schmidt, H. F. Glade, J. F. Hackfeld and J. C. Pfluger doing business at Honolulu under the firm name of H. Hackfeld & Co, the sum of eight thousand, one hundred and early five 77-100 dollars for so much money had and received by defendants to plaintiffs.

The defondants plead the general issue.

The plaintiff introduced in evidence upon which his case is founded, a proposition in writing dated London, July 21, 1883 from J. C. Pfinger and Paul Lemberg of the firm of H. Hackfeld & Co, of Honolulu, to R. A. Macfie, and accepted by him, in which the defendants offer to sell to Macfie all their interest of every sort in the "Kilanea Sugar Company" and current account, "including all debts due in hy your any Robert CR. A. Mache Jr.) as those stood on the 1st instant for the sum of One Hundred and Fifty Thou-sand dollars &c. Among other things the agreement recites, "Your acceptance of the foregoing hands over to you the 151 shares now held by us and the leasehold interest appertaining to the half-moiety acquired by your son, and releases the "Mache holdings" entirely from all liabilities anterior to July lat, whether by mortgage or otherwise, so as to give a fresh, clean start which we will do

our utmost to make prosperous by our advice or assistance if desired." It further stipulated that "This proceeding is to be communicated to our firm at Honolulu by mail and cable as soon as possible: Should however, our in-terests have been sold by our firm before the receiver of the subjection, this transaction will receipt of the cablegram, this transaction will be null and void."

Just before the receipt by the defaudants in

Honolulu of the cablegram conveying notice of this transaction, they had sold their in-terests in the Kilauca Sugar Company to Wm. Y. Horner of Labaina.

After considerable negotiation extending

over some time, Mr. Horner agreed to sell his interest to Mr. Macfie (plaintiff) in order that the firm might carry out the "London Agreement." The agreement of sale is dated 10th January 1884. It stipulates that Horner is to sell to Macfie his interest in the Kilaues Manning vs. Alose 11 Alien 520 where a false representation was made not only as to the value of the bonds offered but also as to the sales of such bonds in the market at a certain price, appearing by a public list of sales of stocks, which was exhibited as actually taken place and the action was maintained. The Court say in this case that "the representation was one which the plaintiff is not shown to have had equal means of knowing the truth or untreth of, and on which be might, without maputation, rely" without imputation, rely "

In Morrow vs. Miller, Chapman, C. J. says:
"If false representation relate to material facts
not within the observation of the opposite
party, and are made with intention to deceive,
they are actionable; but if the traft can
be ascertained by ordinary diligence they are
not actionable."

In No. party, and are made with intention to deceive, the credit time is the said account to some they are actionable; but if the trath can 1663 bags of sugar received on account by the ascertained by ordinary diligence they are not actionable.

In New York State the law is similarly was also agreed that all necessary instruments

that all accounts shall be settled as of said July first; all sugars which may have been shipped from the plantation of Said Kilauea Sugar Co, on or before said July first as well as all sugars which may have been received by said parties of the third part at Honolulu and are not accounted for in their quarterly and are not accounted for in their quarterly account of that date are to go to reduce the balance due them of that date; and all indebtedness and liabilities of and Kinnea Supur Company existing anterior to July first A. D. 1853 whether by mortgage or otherwise are to be assumed and borne by said parties of the third part, and said parties of the third part, do kerely assume the same; all amounts which have been advanced by the said parties of the visit of the said parties of the s have been advanced by the said parties of the third part to said Kilauea Sugar Company since July first A. D. 1883 for the use of the Company and none other are to be paid by said party of the second part; and said parties

of the third part hereby acknowledge the re-ceipt from said party of the second part of the sum of sixty two thousand nine hundred and

At the same time Mactic Senior and Mact Junior and the Kilauca Sugar Co, by W. Y. Horner President, released and discharged H. Hackfeld & Co, of all manner of debts, claims, demand and liability whatsoever in law as well as in equity which they now have on which which may bereafter accrue to them re-poctively by reason of any matter, thing, transaction or business from the beginning of the world to the date of these presents, ex-cepting, however from this release such matters pertaining to the book debt due from the Kilanea Sugar Co, to said H. Hackfeld & Co from and after the 1st day of July 1883 am such awards as may hereafter be made betwee them (H. Hackfeld & Co) and the underst

Cooley however admits that there are the contrary.

In Hollrook vs. Conner 60 Me 578, it was held by a bare majority of the Court that false and fraudulent representations to a purchaser of the value of lands as to the price he paid for it etc. are not actionable, because the purchaser is not justified in placing confidence in them.

So also in Bishop vs. Small 63 Me 12;

Misrepresentations either as to what a particular is composed mainly of items of indebtedness by the Killanes of the Company prior to 1st July 1883, and which were paid by H. Hackfeld & Co as agents of the Company, and in the first instance, charged in the accounts current and repaid by Mache in the settlement of 15th January 1884, and included in the sum of \$62,940. One item will suffice to illustrate the general character of the transactions. In between parties hereto dated the 15th day of with it, and this applied to the stock in the Honolulu Ree Co.

Mr. Ellis in his snawer detries that he said to Mr. Wilcox that Wilder held his stock at pur and refused to self for less but says that he answered Wilcox's enquiry as to whose the states than he sawered Wilcox's enquiry as to whose the states than he say were, that they were Foster's and Wilcox that Wilder was unwelled to ell for Wilder but that Wilder was unwelled to ell for less than par.

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Mr. Wilder but that Wilder was unwelled to the stock in the sound and the stock at the stock at the said that if the representations that there are the action and the said down the stock at the said that the elled that the said down that there is charged as paid by the intending buyer by any large that there is charged as paid the beginder of the killed. Your said for the saction and the said down the said for the said for the same sold for by and the said for the same actionable to t Habilities of the Kilauen Sugar Co, existing anterior to July first A. D. 1883" are to be assumed and borne by them, and that they do herely assume the same." These words are susceptible of but one meaning; and the meaning is not that whatever sums of money have been actually paid by H. Hackfeld & Co, on account of the Kilauea Sugar Co, are to be borne by them; but they mean that H. Hackfeld & Co, agree to assume and bear all the indebtedness of the Company existing prior to 1st July. And if Macfie had berne any of these in the amount of \$82,046,02, paid by these in the amount of \$62,040.92, paid by him without prejudice in order to facilitate settlement of the title of the plantation, h

was to have them paid back. The languag of the deed is that the payment of \$62,940.0: is the balance appearing to favor of Meson Hackfeld & Co, but said account current and the payment of said last named sum on according thereof "are not to be taken as final," right of the plaintiff to sue at law to recove these sums in default of aubmitting the matter diligent inquiry have ascertained whether the representation was true or not.

Having arrived at this view of the law, I think the relief prayed for ought to be granted. Decree accordingly.

A. S. Hartwell for plaintiff, F. M. Hatch for defoundant.

Homolalu, March 6th, 1885,

Supreme Court of the Hawailian Islands

In Banco. January Term 1885.

Samuel Store vs. B. H. Kahananu.

Judd, C. J. McColly, J. Anatim, J.

Appeal by the defendant from Decree of the Chancellor, upon a bill in equity respond well with the language need in this agreement of sale of January 15.

Appeal by the defendant from Decree of the Chancellor, upon a bill in equity which alleges a partnership between the parties in a certain billiard saleon luminary in the formal instrument of sale of January 15.

This was their final act sed must determine the rights of the parties. The language of the deed is plain and unequivocal and free from ambiguity and must be interpreted by the Centra according to its own terms, having no reference to the partie eldence which was offered abowing a different understanding by some of the parties.

The release, executed contemporaneously accepts from its own operation, "such matters ertaining to the book debt due from the Kiauea Sugar Co, to H. Hackfeld & Co, from and after the lat day of July 1883, and such awards as may bereafter be made between I. Hackfeld & Co and Mache in conformit with the contract of sale of January 15. Thus the right which Mache reserved to himself it the deed of January 15 to recover sums paid by him in the settlement, being indebtedess f the Kilanea Sugar Co. existing prior to

Having no doubt as to the principles of law involved, I think judgmost must be entered for plaintiff for the sum declared on as set forth in the bill of particulars as fur as and including the item "Keaka \$149.50" in all amounting to \$6720.16.

ing the item "Keaka \$119.50" in all amounting to \$6729.46.

Of the remaining items, I disallow "Error, or Invoice Bec. \$75." as being no error; also item paid Coeff Brown \$25 of which there is no proof; also order No. 119 paid by G. W. Macfarlane & Co. for \$40 and not recoverable in an action for money had and received by these defendants.

Interest is allowed at 9 per cent, per annum or all items from time of payment of each to August 1st, 1883, and after this to the 19th January 1881 at 8 per cent, per annum, this being the interest which was charged to and paid by the plaintiff in his settlement; and also

interest on the whole sum recovered at 2 per cent, per annum from the date of demand which is July 31, 1884.

The bill of particulars also claims items amounting to 8400, being fees paid to counsel by H. Hackfeld & Co, subsequent to 1at July 1883 and claimed by plaintiff as being improperly chargeable to the Kilanea Sugar Co. The case was a bill in equity by R. A. Macfie Jr. vs. Horner and the Kilauca Sugar Co., its object being to compel Horner as the holder of a debt owing by the Kilauca Sugar Co of which Macfie was surety to exhaust his remewhich Macfie was surety to exhaust his remedies against the Company before resorting t him. The Kilauea Sugar Company was im-pleaded and the prayer of the bill was that it might be ordered to give plaintiff indomnity and be enjoined from selling or disposing of the property until it had provided indemnity etc. From this statement it is sufficiently plain that the Kilauca Sugar Co, had a substantial interest to defend and which required the aid of Counsel. As I find that the expenditure for

Judgment as above.

F. M. Hatch for plaintiff; Paul Neminith & Thurston for defendants. Honolula, March 11th, 1885.

Supreme Court of the Hawaiian Islands-In Baucs January Term, 1885 W. C. ACHI VS. KAUWA ET AL.

This is an action of ejectment.

The plaintiff was the grantee of the heirs of the patentee of the land by a recorded deed. The defendants' claim under an unrecorded deed from the patentee dated in 1867 to the defendants, con stituting a "hui" (firm), and show that some of the defendants live and are supported on the land, and cultivate parts the same yearly, and fence what they cul-tivate; and that there are two houses on the land which have stood a long time. The plaintiff claims that this unrecorded

is constructive notice to the purchaser and imposes upon him the duty to inquire as to the rights of the person in poss and that as to him the purchaser have the benefit of the recording act, be-cause not deemed a purchaser in good faith for value. This decision has been followed and never since questioned i

sustain his view the chancellor cites th cross vs. Wistgery 2 Mass. 508. Theresifter however, and prior to the case of Pomray vs. Steress 11 Met 244-7 cited by plaintiffs counsel decided in 1846, a statute was passed in Massachusetts which expressly provides "that no conveyance of real estate shall be valid and effectual against any person other than the grantor and his heirs and devisees, and persons having actual notice thereof, unless it is made by a deed recorded as the statute directs. And under this statute it was and is held in Massachusetts that no implied or con-structive notice of an unregistered deed will give it validity against a subsequent

In the 6 Wend. 257 id. Chancellor Wal worth refers to Doe vs. Alsop 5 Barn. and Ald. 142 decided under the Middlesex Registry act 7 Anne, Chap. 20, where the holding was like that in the Massachusetts cases, and says that the act is imperative that the conveyance shall be void agains any subsequent purchaser, and that the words bone fide purchaser are not used in the act; and refers to a similar decision in Virginia where the law and the decision

were subsequent changed.

See also Daniels vs. Davidson 16 Vesey 268, 17 Vesey 433, where the New York doctrine is sustained. In equity and at common law without reference to special statutes; and, it seems to us, upon reason; good faith requires a purchaser of land to take his title subject to the claims of par-ties in possession when he buys. Under our statute if the party in open possession is unable to show actual notice of his un-registered deed to a subsequent purchaser. his possession is constructive notice to such purchaser of all his rights, and he

cannot be disturbed therein.

In the case at bar the land was agricultural land. Of such land, the possession as shown, under a deed, conveying the whole, is sufficient to constitute constructive notice of the defendants, rights to th whole by many authorities both here and in the United States. See Maule vs. Wai-hee Sugar Co., 4 Haw'n 637. We have lately fully considered the nature of adverse possession of similar

the line of authorities cited by the plain-tiffs counsel under this point. We do not tiffs counsel under this point. deem it necessary to re-examine the same now. See Mahukaliilii et. al. vs. Hikas-For these reasons the exceptions ar W. B. Castle for plaintiffs; F. M. Hatch

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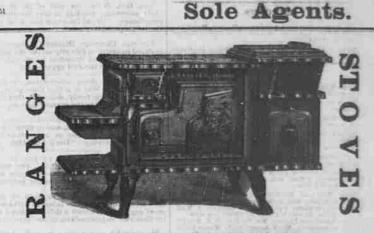
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